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## **OLR Bill Analysis**

### **sHB 6400**

#### ***AN ACT CONCERNING LICENSURE OF STORMWATER PROFESSIONALS.***

##### **SUMMARY:**

This bill creates a licensing program for stormwater professionals. It defines such professionals as people qualified by specialized knowledge to plan, design, and engineer a stormwater pollution abatement facility, including offering or providing clients with professional services in connection with such activities. The bill defines stormwater as rainfall runoff, including snow or ice melt during a rain event.

Individuals must meet experience and education requirements, pass an exam, and pay exam and annual licensure fees. The bill allows such licensees, or before the first licensee roster is compiled, other stormwater professionals meeting similar requirements, to verify that (1) stormwater permit applications meet applicable state and local regulatory requirements and (2) permit applications submitted to local land use commissions meet such entities' applicable soil and erosion sediment control regulations. Under the bill, the Department of Environment Protection (DEP) and local land use commissions can reject such verifications only under specified conditions.

The bill creates an 11-member State Board of Examiners of Stormwater Professionals within DEP to administer the bill's licensing provisions. It allows the board to investigate licensee conduct. It also allows the DEP commissioner, who is the board's chairperson, to audit licensee actions and take various enforcement actions regarding licensees and applicants. It allows the commissioner, with the board's advice and assistance, to adopt regulations for specified purposes related to stormwater professionals.

The bill also allows the DEP commissioner to review any impact to protected species (see BACKGROUND) or their habitat for a stormwater permit application or a discharge certification provided by the commissioner under the federal Clean Water Act to a private applicant or for a private activity, but only if the private applicant's proposed activity is receiving more than \$1 million in state funds.

EFFECTIVE DATE: Upon passage

### **STATE BOARD OF EXAMINERS OF STORMWATER PROFESSIONALS**

The bill requires the board members to administer the bill's provisions regarding stormwater professional licensing, including license issuance, reissuance, suspension, and revocation.

The DEP commissioner, or his designee, is the board's chairperson. The governor appoints the other 10 board members. Six members must be (1) licensed stormwater professionals or (2) before the board publishes the first roster of licensed stormwater professionals, people on the list of stormwater professionals that the bill requires the commissioner to maintain, as described below. At least four of these six members must have civil engineering expertise and must be licensed professional engineers.

Two board members must be active members of an organization promoting environmental protection, and another two must be active members of an organization promoting business.

Board members are not paid but are reimbursed for necessary expenses. The governor may remove any board member for misconduct, incompetence, or neglect of duty. The board must keep a true and complete record of its proceedings.

The board must (1) keep a register of all license applications and the actions it took on them and (2) prepare a roster of licensees by the beginning of each calendar year. A copy of the roster must be filed in the Secretary of the State's Office.

The board must authorize the DEP commissioner to issue a stormwater professional license to anyone who demonstrates to the board's satisfaction that he or she has met the requirements specified below.

## **LICENSING REQUIREMENTS**

### ***Fees***

Applicants for a stormwater professional license must pay a \$235 examination fee to the DEP commissioner. Licensees must annually pay a \$250 fee to the commissioner that is due July 1, beginning with the calendar year following the year the license was issued. The commissioner must deposit money received through these fees in the General Fund.

### ***Experience, Education, and Examination***

To be licensed, the applicant must meet either of two experience requirements. Both requirements consider the number of years the person was engaged in planning, designing, and engineering stormwater pollution abatement facilities (see BACKGROUND), including the number of years the person was in responsible charge. The options are:

1. at least eight years of such experience, including a minimum of four years in responsible charge, if the person (a) holds a bachelor's or advanced degree from an accredited college or university in a related science or engineering field or (b) is a licensed professional engineer; or
2. at least 14 years of such experience, including a minimum of seven years in responsible charge.

The bill allows the board to consider all undergraduate, graduate, postgraduate, and other courses completed by the applicant in considering whether a degree qualifies for these requirements.

The applicant must also pass an exam testing his or her knowledge of the physical and environmental sciences that apply to the planning, design, and engineering of stormwater pollution abatement facilities

that comply with DEP water discharge regulations and any other applicable guidelines or regulations the commissioner adopts. The exam may be written or both written and oral. The test is prescribed by the board and must be approved by the DEP commissioner. The bill requires the board to hold the first exam within 18 months of the bill's passage.

### ***Licensee Roster and List of Stormwater Professionals***

The bill requires the board to publish the first roster of licensed stormwater professionals within six months of the first examination. Until the first roster is published, people who pay a \$250 registration fee and meet the experience and education requirements under option (1) above may apply to the commissioner to be placed on a list of stormwater professionals. Anyone on this list may perform the duties of a licensed stormwater professional until the board publishes the first roster of licensees.

### ***Investigation and Enforcement***

The bill allows the board to investigate a licensed stormwater professional's conduct. The commissioner may also conduct random audits of a licensee's actions.

The bill requires the board to authorize the commissioner to:

1. revoke or suspend a stormwater professional's license;
2. impose other sanctions that the board deems appropriate; or
3. deny a license application if the board, after providing the person with notice and an opportunity to be heard concerning the revocation, suspension, other sanction, or denial, finds that he or she has submitted false or misleading information to the board or has engaged in professional misconduct. For this purpose, professional misconduct may include (a) knowingly or recklessly making a false verification that a stormwater pollution abatement facility plan meets the requirements of a general permit or stormwater regulations or (b) violating the bill's provisions on stormwater professionals or regulations

adopted under them.

The bill specifies that it does not authorize a licensed stormwater professional to engage in any profession or occupation requiring a license under other state law without that license.

#### **STORMWATER PERMIT AND SOIL AND EROSION SEDIMENT CONTROL VERIFICATIONS**

The bill allows a licensed stormwater professional, or someone on the list of stormwater professionals before the board publishes the first licensee roster, to verify to the DEP commissioner that a stormwater permit application complies with any of the following: applicable stormwater discharge regulations, stormwater general discharge permit requirements, or an applicable municipality's soil and erosion sediment control regulations. The bill requires the commissioner to issue any required public notice concerning a pending application within 30 days of receiving it accompanied by the verification.

The commissioner must accept a verification by someone authorized to submit it as specified above unless:

1. the person is the subject of an investigation, as provided above;
2. the verification is the subject of a random audit, as provided above; or
3. after any required public hearing on the permit application, the commissioner determines that the applicable stormwater discharge regulations, stormwater general discharge permit requirements, or applicable municipality's soil and erosion sediment control regulations have not been met.

The bill also permits a licensed stormwater professional, or someone on the list of stormwater professionals before the board publishes the first licensee roster, to verify to specified entities that a permit application submitted to the entity complies with the entity's applicable soil and erosion sediment control regulations. This applies regardless of the law on zoning, incentive housing zones, municipal

planning commissions, affordable housing land use appeals, and wetlands and watercourses. The specified entities are a municipal zoning commission, planning commission, planning and zoning commission, inland wetland agency, or their agents.

The commission or agency, or its authorized agent, must accept such verification by someone authorized to submit it unless the individual is the subject of an investigation by the commissioner as provided in the bill.

## **REGULATIONS**

The bill allows the commissioner, with the board's advice and assistance, to adopt regulations prescribing:

1. professional ethics and conduct appropriate to set and maintain a high standard of integrity for stormwater professionals,
2. rules for conducting the board's affairs,
3. requirements for examining license applicants,
4. rules pertaining to the design and use of seals by licensees, and
5. rules governing the license issuance and renewal process, including procedures for allowing an individual to renew a license without retaking the license examination when he or she submits an application within six months after his or her license expires.

## **BACKGROUND**

### ***Pollution Abatement Facility***

The law on water pollution control defines a pollution abatement facility as any equipment, plant, treatment works, structure, machinery, apparatus, or land, or any combination of these, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or treatment of water or wastes, or for the final disposal of residues resulting from such treatment, including: pumping and ventilating stations, facilities,

plants and works; outfall sewers, interceptor sewers and collector sewers; and other real or personal property and appurtenances incident to their use or operation (CGS § 22a-423).

***Endangered or Threatened Species or Species of Special Concern***

State law provides various protections for endangered or threatened species, as well as species of special concern. An endangered species is any native species documented to be in danger of extinction throughout all or a significant portion of its range within the state and to have no more than five “occurrences” in the state. A threatened species is any native species documented to be likely to become endangered in the foreseeable future throughout all or a significant portion of its range in the state and to have no more than nine occurrences here. An occurrence is a population of a species breeding and existing within the same ecological community and capable, or potentially capable, of interbreeding with other species members in that community. State law also protects species listed as endangered or threatened by the federal Endangered Species Act (CGS § 26-304 (7), (8) and (15)).

A species of special concern is a native plant or non-harvested wildlife species (1) documented to have a naturally restricted range or habitat in the state, (2) to be at a low population level, (3) to be in such high human demand that its unregulated taking would be detrimental to the conservation of its population, or (4) that has been eliminated from the state (CGS § 26-304(9)).

**COMMITTEE ACTION**

Commerce Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/08/2011)